

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2034**

As Recommended by Senate Committee on
Judiciary

Brief*

Senate Sub. for HB 2034 would amend law related to court orders for restitution by criminal defendants, as follows.

Under current law, a court is required to order restitution unless the court finds compelling circumstances that would render a plan of restitution unworkable. The bill would amend this provision to require a court to order restitution and to specify that ordered restitution shall be due immediately, unless the court orders that the defendant be given a specified time to pay or be allowed to pay in specified installments, or the court finds compelling circumstances that would render restitution unworkable, either in whole or in part. Current provisions requiring the court to state reasons for unworkability on the record and requiring the court to initiate collection proceedings if the defendant is in noncompliance with the restitution order after 60 days would be amended to reflect the above amendments. The collection provisions also would be amended to ensure consistency in statutory phrasing and reflect enacted changes to related statutes.

A provision would be added to allow a defendant subject to a restitution order entered prior to the effective date of the bill to file a motion prior to December 31, 2020, proposing payment of restitution in specified installments, if the order does not give the defendant a specified time to pay or set payment in specified installments. The court could recall the restitution order from the assigned agent until the court rules

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

on the motion. If the court does not order payment in specified installments, or if the defendant does not file a motion by the above date, the restitution would be due immediately.

The bill would specify the above amendments are procedural in nature and shall be construed and applied retroactively.

The bill would amend the statute governing conditions of probation or suspended sentence to direct that reparation or restitution in such cases be made in accordance with the procedure amended by the bill.

The bill would be in effect upon publication in the *Kansas Register*.

Background

As introduced, HB 2034 would have created the Supported Decision-Making Agreements Act. The bill was amended by the Senate Committee on Judiciary (Senate Committee) and rereferred to the Senate Committee in February 2020. On May 20, 2020, the Senate Committee recommended a substitute bill replacing that language with the provisions of SB 497 regarding court orders for restitution.

SB 497

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Miller on behalf of Senator Wilborn.

In the Senate Committee on Judiciary hearing, a representative of Butler and Associates testified in support of the bill, stating it is intended to address the Kansas Court of Appeals decision in *State v. Roberts*, ___ Kan. App. 2d ___, 461 P.3d 477 (February 21, 2020), which calls into doubt the

validity of numerous restitution orders across the state. No other testimony was submitted.

According to the fiscal note prepared by the Division of the Budget on SB 497, the Office of Judicial Administration (OJA) indicates the *Roberts* decision requires a payment plan be implemented before restitution can be sent to collections, increasing the time court personnel must spend in processing and implementing payment plans, as well as potentially tracking and resentencing defendants. OJA indicates enactment of the bill would reverse these implications of the *Roberts* decision and reduce the increased expenditure. OJA also states the bill could have a fiscal effect on revenues to the Judicial Branch, but the fiscal effect of expenditures and revenues to the Judicial Branch cannot be estimated.

The Office of the Attorney General indicates enactment of the bill would result in additional litigation costs in cases where restitution has been ordered and payment plans have not been made by the court, but it cannot estimate the fiscal effect of the bill, since the number of defendants who may file motions under the new provision asking for a payment plan is unknown.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.